



## Senate

General Assembly

**File No. 188**

February Session, 2002

Substitute Senate Bill No. 465

*Senate, March 27, 2002*

The Committee on Planning and Development reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### **AN ACT CONCERNING WASTEWATER DISCHARGES IN DRINKING WATER SUPPLY WATERSHEDS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 22a-430 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2002*):

4 (b) The commissioner, at least thirty days before approving or  
5 denying a permit application for a discharge, shall publish once in a  
6 newspaper having a substantial circulation in the affected area notice  
7 of (1) the name of the applicant; (2) the location, volume, frequency  
8 and nature of the discharge; (3) the tentative decision on the  
9 application, and (4) additional information the commissioner deems  
10 necessary to comply with the federal Clean Water Act (33 USC 1251 et  
11 seq.). There shall be a comment period following the public notice  
12 during which period interested persons and municipalities may

13 submit written comments. After the comment period, the  
14 commissioner shall make a final determination either that (A) such  
15 discharge would not cause pollution of any of the waters of the state,  
16 in which case he shall issue a permit for such discharge, or (B) after  
17 giving due regard to any proposed system to treat the discharge, that  
18 such discharge would cause pollution of any of the waters of the state,  
19 in which case he shall deny the application and notify the applicant of  
20 such denial and the reasons therefor, or (C) the proposed system to  
21 treat such discharge will protect the waters of the state from pollution,  
22 in which case he shall, except as provided pursuant to subsection (j) of  
23 this section, require the applicant to submit plans and specifications  
24 and such other information as he may require and shall impose such  
25 additional conditions as may be required to protect such water, and if  
26 the commissioner finds that the proposed system to treat the  
27 discharge, as described by the plans and specifications or such other  
28 information as may be required by the commissioner pursuant to  
29 subsection (j) of this section, will protect the waters of the state from  
30 pollution, he shall notify the applicant of his approval and, when such  
31 applicant has installed such system, in full compliance with the  
32 approval thereof, the commissioner shall issue a permit for such  
33 discharge, or (D) the proposed system to treat such discharge, as  
34 described by the plans and specifications, will not protect the waters of  
35 the state, in which case he shall promptly notify the applicant that its  
36 application is denied and the reasons therefor. No permit shall be  
37 issued for a discharge into a drinking water supply watershed unless  
38 the commissioner determines the discharge is consistent with the state  
39 plan of conservation and development and the applicant submits to  
40 the commissioner a copy of a valid certificate of zoning approval,  
41 special permit, special exception or variance, or other documentation,  
42 establishing that the project producing the treatment and disposal  
43 system and discharge complies with the zoning requirements adopted  
44 pursuant to chapter 124 or any special act by the municipality in which  
45 such discharge is located. The commissioner shall, by regulations  
46 adopted in accordance with the provisions of chapter 54, establish  
47 procedures, criteria and standards as appropriate for determining if (i)

48 a discharge would cause pollution to the waters of the state, and (ii) a  
49 treatment system is adequate to protect the waters of the state from  
50 pollution. Such procedures, criteria and standards may include  
51 schedules of activities, prohibitions of practices, operating and  
52 maintenance procedures, management practices and other measures to  
53 prevent or reduce pollution of the waters of the state, provided the  
54 commissioner in adopting such procedures, criteria and standards  
55 shall consider best management practices. The regulations shall specify  
56 the circumstances under which procedures, criteria and standards for  
57 activities other than treatment will be required. For the purposes of  
58 this section, "best management practices" means those practices which  
59 reduce the discharge of waste into the waters of the state and which  
60 have been determined by the commissioner to be acceptable based on,  
61 but not limited to, technical, economic and institutional feasibility. Any  
62 applicant, or in the case of a permit issued pursuant to the federal  
63 Water Pollution Control Act, any person or municipality, who is  
64 aggrieved by a decision of the commissioner where an application has  
65 not been given a public hearing shall have the right to a hearing and an  
66 appeal therefrom in the same manner as provided in sections 22a-436  
67 and 22a-437. Any applicant, or in the case of a permit issued pursuant  
68 to the federal Water Pollution Control Act, any person or municipality,  
69 who is aggrieved by a decision of the commissioner where an  
70 application has been given a public hearing shall have the right to  
71 appeal as provided in section 22a-437. The commissioner may, by  
72 regulation, exempt certain categories, types or sizes of discharge from  
73 the requirement for notice prior to approving or denying the  
74 application if such category, type or size of discharge is not likely to  
75 cause substantial pollution. The commissioner may hold a public  
76 hearing prior to approving or denying any application if in his  
77 discretion the public interest will be best served thereby, and he shall  
78 hold a hearing upon receipt of a petition signed by at least twenty-five  
79 persons. Notice of such hearing shall be published at least thirty days  
80 before the hearing in a newspaper having a substantial circulation in  
81 the area affected.

This act shall take effect as follows:
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Section 1	<i>October 1, 2002</i>
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**PD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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### **OFA Fiscal Note**

#### **State Impact:**

<b>Fund-Type</b>	<b>Agency Affected</b>	<b>FY 03 \$</b>	<b>FY 04 \$</b>
GF- Environmental Quality-Cost	Department of Environmental Protection	Potential Significant	Potential Significant

**Municipal Impact:** None

#### **Explanation**

In the majority of cases, requiring the Commissioner of the Department of Environmental Protection (DEP) to make a determination before the issuance of a discharge permit, in a drinking water supply watershed, that the discharge is consistent with the state plan of conservation and development and requiring the submittal of documentation by the applicant that the discharge complies with zoning requirements, or any special act by the municipality in which the discharge is located, is anticipated to minimally increase DEP's workload, within normal budgetary resources. Non-issuance of a permit due to consistency with the state plan of conservation and development could be a controversial decision leading to appeals by the applicant. Assuming 3 to 5 of these permits are requested per year, it is estimated that one out of the 3 to 5 could result in a contested case. This could increase costs for appeals by over \$100,000 per year. To the extent that this law would re-empt applications that might be inconsistent with the state plan, the impact would be reduced. The exact impact is indeterminate. Since the burden is on the applicant to submit documentation, no additional municipal fiscal impact is anticipated.

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**OLR Bill Analysis**

sSB 465

**AN ACT CONCERNING WASTEWATER DISCHARGES IN  
DRINKING WATER SUPPLY WATERSHEDS****SUMMARY:**

This bill bars the environmental protection commissioner from issuing a discharge permit for a facility within a drinking water supply watershed, unless it meets two additional criteria. First, the commissioner must find that the proposed discharge is consistent with the State Plan of Conservation and Development. Second, the applicant must provide a copy of a valid certificate of zoning approval, special permit, special exception or variance, or other documentation indicating the project producing the treatment and disposal system and discharge complies with local zoning requirements.

Current law requires the commissioner to issue a discharge permit if the application is consistent with the federal Clean Water Act and (1) the discharge will not pollute state waters, or (2) the system proposed to treat the discharge will protect state waters from pollution. Current law does not require the commissioner to use consistency with the plan of conservation and development in any regulatory process. (It does require him to consider consistency with the plan when prioritizing grant and loan applications for water quality projects.)

The bill does not provide a method for towns without zoning requirements to satisfy the condition of local zoning approval documentation. (There are several such towns in the state.) This apparently means that no discharge permits can be issued for facilities in towns without zoning. Also, it is not clear what valid zoning documentation exists for an existing, appropriately zoned facility that seeks a discharge permit since such facilities do not need local land-use approval. In addition, the bill is silent on how towns should issue a document showing zoning approval or variance for a grandfathered pre-existing, nonconforming use.

EFFECTIVE DATE: October 1, 2002

**BACKGROUND*****State Plan of Conservation and Development***

The State Plan of Conservation and Development is a statement of the state's growth, resource management, and public investment policies. State agency projects must be consistent with the plan if they cost over \$100,000.

The plan calls for protecting water supplies, including watersheds. It also notes that environmental and conservation needs must be balanced against private property rights and development needs but does not provide a method for balancing competing needs and concerns. The plan also encourages development in areas that already have the infrastructure to support it (cities, developed suburbs, and town centers) and encourages preservation of land, open space, and water resources, especially in rural areas.

The Office of Policy and Management develops the plan, which goes before the legislature for hearings and approval. The current plan is scheduled for revision next year.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 17      Nay 0